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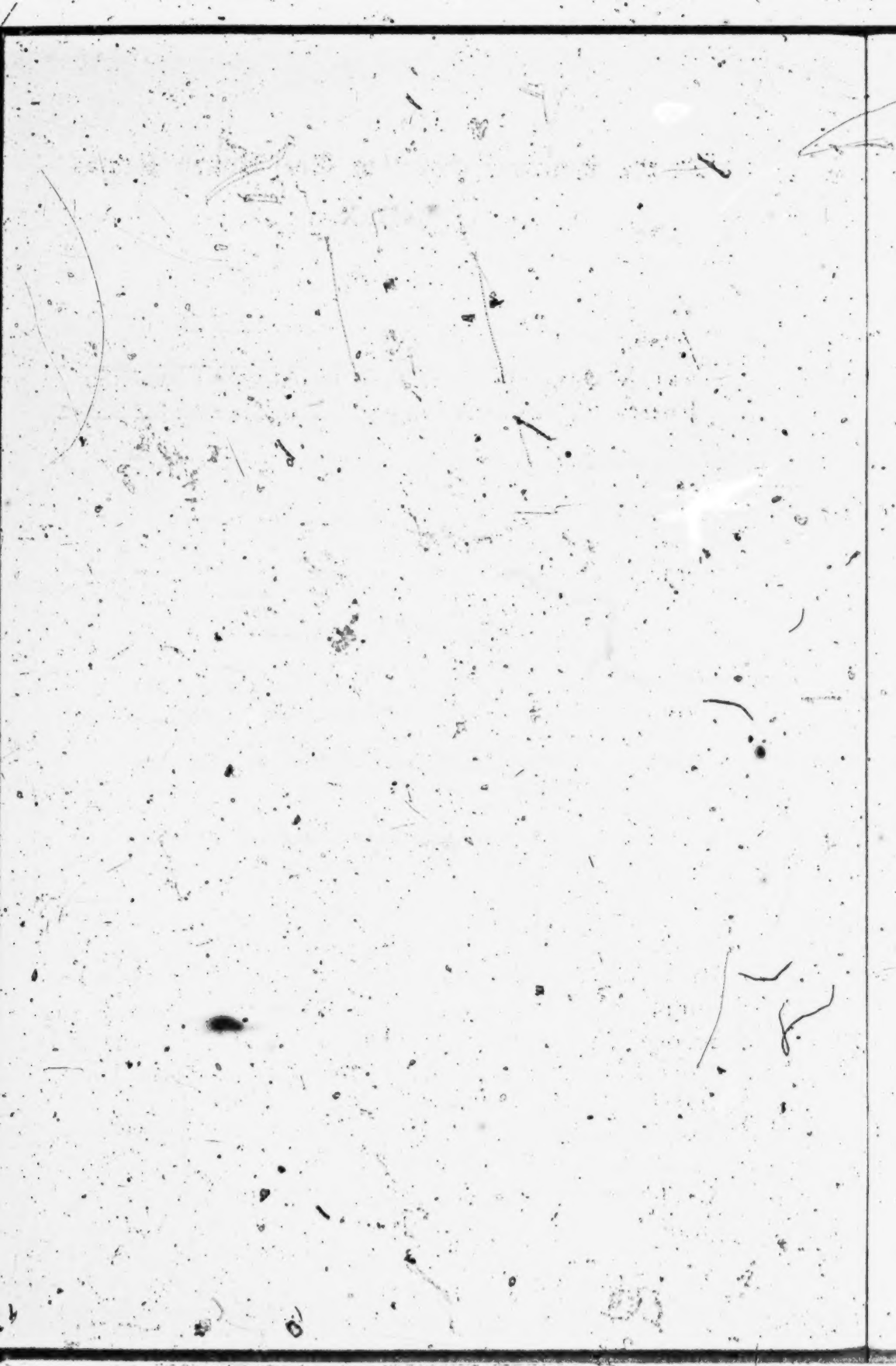
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In the Supreme Court of The United States

OCTOBER TERM, 1968

No. 997

ARLAM CARR, JR., A MINOR, BY ARLAM CARR AND JOHNNIE CARR, HIS PARENTS AND NEXT FRIENDS, ET AL.,

PETITIONERS,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 404) as modified and amended (R. 428) is reported at 289 F. Supp. 647. The opinion of the Court of Appeals is reported at 400 F. 2d 1. The orders of the Court of Appeals denying rehearing, denying rehearing en banc and dissenting opinions are reported at 402 F. 2d 782.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

STATEMENT

The petition filed by the plaintiffs below is directed to the identical orders as is the petition heretofore filed by the government and docketed in December, 1968, as Case No. 798. In response to the statement contained in the brief of the plaintiffs below, these respondents adopt the statement previously set forth in the brief in opposition to the petition filed by the government in Case No. 798.

QUESTION PRESENTED

The real question presented in the petition, as filed by the plaintiffs, Arlam Carr, Jr., et al., is exactly the same as these respondents have already stated in their brief in opposition to the petition filed by the government:

> "Must a school board, which has adopted immediate plans to completely desegregate its faculty, which has already made extensive numerical progress in faculty desegregation and which has consistently demonstrated meaningful good faith compliance with constitutional mandates to achieve a racially nondiscriminatory school system, be forced to assign faculty members according to a mathematical ratio fixed by the racial balance of the entire faculty?"

ARGUMENT

REASONS FOR DISALLOWANCE OF WRIT

These respondents adopt the argument set forth in their brief in opposition to the writ of certiorari in Case No. 798.

As additional argument the respondents show that the petition filed by the plaintiffs below, as does the petition filed by the government, completely ignores the following factors:

1. The Montgomery County Board of Education has adopted a meaningful plan for faculty desegregation. The directives of the Court of Appeals in the opinion below are clear:

> "Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. *Any conduct by any board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated.* It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. *School Boards must not use excuses to delay the achievement of full faculty and staff desegregation.*" 400 F. 2d 1 at page 8. (Emphasis ours.)

2. The plan presently in operation is working *now* to accomplish full faculty desegregation.

3. The numerical progress already achieved is reflected in Appendices A and B to the brief of the respondents in opposition to the government's petition

for a writ of certiorari.[1] This progress establishes the effectiveness of this board's desegregation plan and is substantive proof that the plan is in fact working *now*.

4. The Fifth Circuit has clearly stated that 1970 is the completion date for compliance.[2]

5. The vital individual considerations that are inherent in sound and effective faculty placement.

6. School boards, under the duty to achieve a racially nondiscriminatory school system, also have the duty to provide quality education for white and Negro children.

7. A mathematical ratio requirement in faculty assignment of necessity would force teachers to be assigned and transferred on the basis of numbers, percentages and statistics rather than on the educational needs of school children.

8. A mathematical ratio for teacher assignment based on the current ratio of the entire faculty would place the Court in the position of arbitrarily dictating the internal operative decisions of the school board in faculty employment and assignment.

9. The opening of a new school presents unusual administrative problems; such as, course scheduling, student classroom assignments, organization of school activities, installation of special classroom equipment

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[1] The plaintiffs were served with copies of the reports embodied in Appendices A and B to respondents' brief in opposition to the government petition.

[2] *United States v. Board of Education of Bessemer, et al.*, 396 F. 2d 44, at page 52 (5 Cir. 1968).

and classroom aids, the purchase, indexing and cataloging of library books and periodicals and many other organizational details. The faculty assists with many of these initial organizational problems and special attention must be given to the selection of the faculty. The students attending a new school come from existing schools. Teachers assigned to a new school come primarily by transfer from the existing schools which have lost student population. The plaintiffs below take the position that the racial ratio of white to Negro teachers employed in the entire school system is a controlling criterion in the faculty selection for a new school opening. These respondents believe the controlling criteria are to provide quality education in all schools without regard to race or color, by a staff and faculty which is not designed for a heavy concentration of either white or Negro children.

The plaintiffs rely on *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689. In that case, this Court again stated the school board's duty to "establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation." This board recognizes its duty to desegregate faculty to the end that no school will have faculty members designed for a heavy concentration of either white or Negro children. The administrative procedures involved in accomplishment of this recognized objective must be left to the school board, if quality

education, regardless of race, is to be maintained. As the Eighth Circuit stated in *Yarbrough v. Hulbert-West Memphis School District No. 4*, 380 F. 2d 962, "Numbers and percentages per se are not the ultimate answer." The ultimate answer is, of course, a racially nondiscriminatory school system. We respectfully submit that the Constitution of the United States does not prohibit a school board from achieving such an ultimate solution by the use of educationally acceptable standards that is, without the imposition of racial ratios which would be arbitrary and without educational significance.

The plaintiffs call upon this Court for more than a constitutional directive for respondents to provide a racially nondiscriminatory school system. Plaintiffs seek to have the Court enter into the complex details of just how full compliance is to be achieved. The nationwide, circuitwide and statewide inconsistencies which would inevitably result from the imposition of the proposed racial ratio requirement exemplify that such a proposal indeed lacks wisdom. The progress which these respondents have made in the area of faculty desegregation clearly evidences that a racial ratio requirement is unnecessary. The plaintiffs' constitutional rights have been fully protected by the Court of Appeals and by the recognition by these respondents of their constitutional duty to furnish a nondiscriminatory school system. Plaintiffs need not and should not call upon this Court for more.

CONCLUSION

For the foregoing reasons it is respectfully sub-

mitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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February 14, 1969